IN THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF INDIANA EVANSVILLE DIVISION

BEST CHAIRS INCORPORATED, Plaintiff	
v.)	Case No. 3:14-cv-00067-RLY-WGH
FACTORY DIRECT WHOLESALE,	
LLC, EASTERN ENTERPRISES	
LLC, PAY LESS HERE LLC,	
HANPING LIU, ROWLAND)	
DIRECT WHOLESALE, JOHN DOE)	
JANE DOE AND UNKNOWN OTHERS,)	
Defendants.	

RESPONSE IN OPPOSITION TO MOTION FOR CLERK'S ENTRY OF DEFAULT [#103]

Plaintiff Best Chairs, Incorporated ("BCI") has filed a Motion for Clerk's Entry of Default [#103] seeking default against "Defendants Hanping Liu, individually, and Hanping Liu as CEO of Pay Less Here LLC." BCI's motion: (a) does not explain what the difference is between "Hanping Liu, individually" and "Hanping Liu as CEO of Pay Less Here LLC;" or (b) how its motion is not an unreasonable and vexatious multiplication of these proceedings given that BCI's first Motion for Clerk's Entry of Default which also seeks relief against "Hanping Liu as CEO of Eastern Enterprises, LLC." [#098]. There is only one Hanping Liu, and he hereby (again) opposes any Clerk's Entry of Default. This response is virtually identical to Mr. Liu's Opposition [#106] to BCI's first Motion for Clerk's Entry of Default [#098].

I. THE NEWLY ADDED DEFENDANTS WERE NOT PROPERLY SERVED.

Per FRCP 55(a), a default may only be entered against a party that "has failed to plead or otherwise defend." The time for pleading or defending is triggered by service. FRCP 12(a)(1)(A)(i) ("A defendant must serve an answer: (i) within 21 days after being served with the summons and complaint")

Mr. Liu has not been served. BCI's proofs of service consist of certified mail receipts showing that they were signed by persons *other than* Mr. Liu.

Newly Added Defendant	Receipt Signed By	BCI's "Evidence"
Hanping Liu	Gong Wu	SENDEC: COMPLETE THIS SECTION Complete terms 1, 2, and 3. Also complete term 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the oard to you. Affach this card to the back of the mallplece, or on the front if space permits. 1. Article Addressed to: Hanping Liu 2855 N. Berkeley Lake Road Duluth, Georgia 30096 Particle Namber (Handlet First SECTION ON DELIVERY A. Signature B. Received by Fifthed Name) D. In dalivery address on them 17 12 Yes If YES, enter delivery address below: No No Hanping Liu 2855 N. Berkeley Lake Road Duluth, Georgia 30096 Particle Name Medi Collect on Delivery 4. Restricted Delivery? (Extra Fee) Yes 2. Article Namber (Handlet front service labe) PS Form 3811, July 2013 Domestic Return Receipt #103-1]
Pay Less Here LLC	R. Garcia	SENDER: COMPLETE THIS SECTION Complete items 1, 2, and 3. Also complete item 4 if Restricted Delivery is desired. Print your name and address on the reverse so that we can return the card to you. Attach this card to the back of the maliplece, or on the front if space permits. 1. Article Addressed to: Hamping Liu CEO PAY LESS HERE LLC 10384 Royal Terrace Alpharetta, GA 30022 2. Article Number (Fransfer from service label) 7001 0810 0001 0001 0007 1925 PS Form 3811, July 2013 COMPLETE THIS SECTION ON DELIVERY A. Signature X Duby Physical by Physical Number (Physical by Physical Number) Physical by Physical Number (Physical by Physical By Physi

Although each of these mail deliveries was addressed to Hanping Liu, he did not sign either of them. Thus, he has not been served, so the time for him to respond has not expired, let alone begun. Accordingly, the prerequisite for default under FRCP 55(a), namely that a party that "fail[] to plead or otherwise defend," has not occurred, so default is improper.

II. THE TIME FOR THE NEWLY ADDED DEFENDANTS TO RESPOND HAS NOT ELAPSED.

There is a second reason why BCI's Motion for Clerk's Entry of Default should be denied – the Court set April 16, 2015 as the date for Mr. Liu to file a Motion to Dismiss in response to the Amended Complaint. Even if the Court finds that Mr. Liu was properly served

(and he was not), he still has time to respond. The Order states:

In the event there are additional motions to dismiss for lack of personal jurisdiction or for failure to state a claim with respect to newly-added defendants, those motions must be filed on or before April 16, 2015. [#101]

A "motion to dismiss" would be an action to "defend" against BCI's Amended Complaint, and Mr. Liu contends that this Court lacks personal jurisdiction over him and that the Amended Complaint fails to state a claim. As such, Mr. Liu has not "failed to plead or otherwise defend," so the prerequisite for granting default under FRCP 55(a) has not been occurred.

III. CONCLUSION

For the foregoing reasons, BCI's Motion for Default should be denied.

Respectfully submitted,

By: s/Paul B. Overhauser

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Attorneys for Hanping Liu

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being filed electronically, and notice hereof will automatically be sent to all counsel of record that participate in electronic filing, by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

By: <u>s/Paul B. Overhauser</u> Paul B. Overhauser